

what facts and legal considerations will be material to determining whether a group of ‘employees’ is ‘similarly situated’ ” and to “authorize preliminary discovery accordingly.” 985 F.3d at 441. The facts and legal considerations relevant to the “similarly situated” analysis in the present case include the same facts and issues on which the parties recently conducted discovery and briefed in *Repass v. TNT Crane & Rigging, Inc.*, No. 7:18-CV-00107-DC-RCG (“*Repass*”). (See Mag. Judge’s Report and Rec. to Deny TNT’s Motion to Dismiss (Dkt. 21, 5) (noting that the proposed collective here differs from the proposed collective in *Repass* mainly in that the present case is limited to crane operators from TNT’s Midland branch and covers a time period that extends later than the *Repass* case). The relevant facts and legal considerations include:

1. Under what circumstances TNT did or did not pay its Midland crane operators for various preparatory and concluding tasks, including obtaining and loading fuel, diesel exhaust fluid (DEF), lubricants, water, ice, and other items onto their vehicles, and picking up and dropping off riggers at one of Defendant’s yards or another designated location before driving to their jobsites or after returning from their jobsites;
2. Similarities and differences in TNT’s Midland crane operator’s alleged preparatory and concluding tasks;
3. Under what circumstances TNT did or did not pay its Midland crane operators for travel time;
4. Any policies TNT maintained related to payment for the above-referenced preparatory or concluding tasks or travel time;
5. The application of TNT’s travel time policies to its individual Midland crane operators;
6. Whether the above-mentioned tasks are compensable as “principal activities” under the Fair Labor Standards Act (“FLSA”) and the New Mexico Minimum Wage Act (“NMMWA”);
7. Whether the Midland crane operators’ time spent on the above-mentioned tasks can be disregarded under the *de minimis* doctrine;
8. What portion, if any, of the Midland crane operators’ travel time is compensable under the Employee Commuting Flexibility Act (“ECFA”); and
9. Similarities and differences in allegedly unpaid time by TNT’s Midland crane

operators.

Therefore, the parties request that the Court authorize preliminary discovery on the above-listed issues.

Additionally, the parties are currently engaged in settlement discussions and prefer to postpone preliminary discovery related to the motion for notice until those discussions are concluded.

Therefore, the parties respectfully request that the Court set a deadline of **December 14, 2022**, for the parties to conduct preliminary discovery related to the motion for notice. The parties request the Court to set a deadline of 30 days after the close of preliminary discovery for Plaintiff to file his motion for notice. The parties request that the Court set a deadline to file joint scheduling recommendations for the remaining deadlines related to discovery on the merits and trial after the Court rules on the motion for notice and after any notice and opt-in period.

Respectfully submitted,

By: /s/ G. Mark Jodon
G. Mark Jodon
Texas State Bar No. 10669400
mjodon@littler.com
Joseph (Jay) R. Buller III
Texas Bar No. 24110784
jbuller@littler.com
LITTLER MENDELSON, P.C.
1301 McKinney, Suite 1900
Houston, Texas 77010
713.951.9400
713.951.9212 (fax)

By: /s/ Aaron Johnson
Aaron Johnson
State Bar No. 24056961
ajohnson@fairlaborlaw.com
FAIR LABOR LAW
314 E. Highland Mall Blvd, Ste. 401
Austin, Texas 78752
(512) 277-3505
(512) 277-3254 (fax)

ATTORNEY FOR PLAINTIFF

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2022, I electronically submitted the foregoing document for filing using the Court's CM/ECF system, which will serve a true and correct copy of the foregoing document upon all counsel of record.

/s/ Aaron Johnson
Aaron Johnson